

1 **WO**

2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 J & J SPORTS PRODUCTIONS, INC., )  
9 Plaintiff, )  
10 vs. )  
11 LUIS HECTOR MARGAILLAN, et al., )  
12 Defendants. )  
13

No. CIV 13-312-TUC-CKJ

**ORDER**

14 Pending before the Court is Plaintiff's Motion for Award of Costs and Attorneys' Fees  
15 (Doc. 20).  
16

17 *Procedural Background*

18 Plaintiff J & J Sports Productions, Inc., ("J & J Sports") filed a Complaint in this  
19 Court on May 4, 2013. J & J Sports alleged Defendants Luis Hector Margaillan  
20 ("Margaillan") and Lamco Enterprises, LLC ("Lamco") violated 47 U.S.C. § 605 by their  
21 unauthorized publication or use of communications (i.e., the transmission of the *Floyd*  
22 *Mayweather, Jr. v. Miguel Cotto, WBA Super World Light Middleweight Championship*  
23 *Fight Program* ("the Program")) for which J & J Sports had the distributing rights. J & J  
24 Sports also alleged Margaillan and Lamco violated 47 U.S.C. § 553 by their unauthorized  
25 interceptions, reception, publication, divulgence, display, and/or exhibition of the Program.

26 The Clerk of Court entered default on September 11, 2013 (Docs. 11 and 13). On  
27 December 18, 2013, this Court granted J & J Sports' Motion for Default Judgment; Default  
28 Judgment was entered.

1 J & J Sports requests an award of costs and attorneys' fees based on the entry of  
2 default judgment (Doc. 20).

3  
4 *Motion for Award of Costs and Attorneys' Fees* (Doc. 20)

5 J & J Sports requests an award of costs and attorneys' fees based on the entry of  
6 default judgment. J & J Sports Court's entry of default judgment, claiming it is the prevailing  
7 party for purposes of such an award. (ECF No. 15.)

8 Generally, prevailing parties do not recover attorneys' fees unless there is some  
9 statutory or other exception to the American rule. *Middle Mountain Land and Produce Inc.*  
10 *v. Sound Commodities Inc.*, 307 F.3d 1220, 1225 (9th Cir. 2002) (citing *Alyeska Pipeline*  
11 *Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257-59 (1975). 47 U.S.C. § 605 provides an  
12 exception to the American rule.

13 Under 47 U.S.C. § 605, the Court "shall direct the recovery of full costs, including  
14 awarding reasonable attorneys' fees to an aggrieved party who prevails." 47 U.S.C. §  
15 605(e)(3)(B)(iii). A "person aggrieved" includes "any person with proprietary rights in the  
16 intercepted communication by wire or radio[.]" 47 U.S.C. § 605(d)(6), or whose rights to a  
17 communications service have been violated by unauthorized interception or receipt of the  
18 service, 47 U.S.C. § 553(a). *See also J & J Sports Prods., Inc. v. Rezndiz*, No. 08 C 4121,  
19 2008 WL 5211288, at \*2 (N.D.Ill. Dec. 9, 2008) (holding that, under 47 U.S.C. § 553, "it is  
20 clearly possible for non-cable operators to be 'aggrieved' as a result of unauthorized  
21 interception").

22 "Courts consistently confirm that 'a party in whose favor judgment is rendered is  
23 generally the prevailing party for purposes of awarding costs under Rule 54(d).'" *San Diego*  
24 *Police Officers' Ass'n v. San Diego City Employee's Ret. Sys.*, 568 F.3d 725, 741 (9th Cir.  
25 2009). A plaintiff, therefore, who obtains a default judgment may be considered a prevailing  
26 party for purposes of awarding fees and costs under § 605. *See J & J Sports Prods., Inc. v.*  
27 *Miranda*, No. C 09-1037 SI, 2009 WL 3837273 (N.D.Cal. Nov.16, 2009).

28 J & J Sports has prevailed on its claim for violation of 47 U.S.C. § 605 by obtaining

1 a default judgment. J & J Sports is, therefore, entitled to an award of its costs and an award  
2 of reasonable attorneys' fees. J & J Sports seeks \$1,500.00 in costs – however, the Bill of  
3 Costs submitted by J & J Sports states the costs as \$1,450.00.

4 J & J Sports' costs include the filing fee (\$400.00), and service-of-process charges  
5 (\$425.00). The Court finds these costs are allowable by law and necessarily incurred.

6 J & J Sports also lists investigative expenses in the amount of \$625.00. J & J Sports  
7 seeks this cost pursuant to LRCiv 54.1. The Local Rule lists the items that may be taxed,  
8 including "[o]ther items . . . with prior Court approval." J & J Sports does not assert it  
9 "obtained prior court approval to tax its investigator fees or expenses." *J & J Sports*  
10 *Productions, Inc. v. Mosqueda*, No. CV-12-00523-PHX-DGC, 2013 WL 5336848 \*2  
11 (D.Ariz. Sept. 24, 2013). The Court finds this item is not taxable under LRCiv 54.1.

12 Therefore, the Court finds an award of \$825.00 for costs is appropriate.

13 J & J Sports also seek an award of \$1,935.00 for attorneys' fees. LRCiv 54.2 sets  
14 forth factors that are to be discussed, as appropriate, that "bear[] on the reasonableness of the  
15 requested attorneys' fee award[.]" The Court has considered the factors as discussed by  
16 counsel, including the time and labor of counsel and his associates. The Motion includes  
17 preparation of the Motion for an Award of Costs and Attorneys' Fees in the request.  
18 However, "[i]f the moving party claims entitlement to fees for preparing the motion and  
19 memorandum for award of attorneys' fees and related non-taxable expenses, such party also  
20 must cite the applicable legal authority supporting such specific request." LRCiv 54.2(c)(2);  
21 *see also Moshir v. Automobili Lamborghini America LLC*, 927 F.Supp.2d 789, 804 (D.Ariz.  
22 2013). No authority having been provided for an award for the preparation of the pending  
23 motion, the Court will reduce the requested award by \$450.00 (2.75 hours), the amount  
24 requested for the preparation of the pending motion. The remaining number of hours  
25 expended in this case as set forth in the motion is reasonable. *See* Doc. 20. Additionally, in  
26 light of counsel's experience and specialized knowledge, the Court finds the charged hourly  
27 rates, as set forth in the motion, are reasonable. *Id.*; *Hensley v. Eckerhart*, 461 U.S. 424, 433  
28 (1983). The Court finds an award of \$1,425.00 for attorneys' fees is appropriate.

1 Accordingly, IT IS ORDERED:

2 1. Plaintiff's Motion for Award of Costs and Attorneys' Fees (Doc. 20) is  
3 GRANTED IN PART AND DENIED IN PART.

4 2. Plaintiff J & J Sports is awarded \$825.00 in costs and \$1,485.00 in attorneys'  
5 fees.

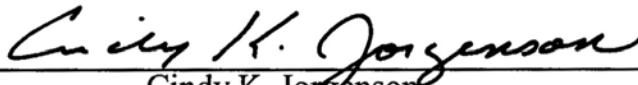
6 3. The Clerk of Court shall enter an amended judgment in this case.

7 4. The Clerk of Court shall mail a copy of this Order to:

8 Luis Hector Margailan  
9 1012 N. G Avenue, Suite 100  
Douglas AZ 85607

10 Lamco Enterprises, LLC  
11 1012 N. G Avenue, Suite 100  
Douglas, AZ 85607

12 DATED this 14th day of January, 2014.

13  
14   
15 Cindy K. Jorgenson  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28